

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 04-
v.	:	DATE FILED: _____
ST. CLARENCE D. AVERY	:	VIOLATIONS:
		18 U.S.C. §§ 1341 & 1346 (honest services mail fraud - 1 count)
	:	18 U.S.C. § 641 - (unauthorized sale of government property - 1 count)
	:	Notice of additional factors

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

At all times material to this indictment:

1. Defendant ST. CLARENCE D. AVERY was an enlisted member of the United States Army who offered items for sale through the internet auction site eBay and through electronic mail ("e-mail"). Among the items ST. CLARENCE D. AVERY offered for sale were Interceptor Outer Tactical Vests ("OTVs") and Small Arms Protective Inserts ("SAPI plates").

2. Defendant ST. CLARENCE D. AVERY was employed by the United States Army as a Staff Sergeant with a military occupation specialty in Supplies. Specifically, he was the Supply Specialist for the U.S. Army, 2nd Battalion, 504th Parachute Infantry Regiment, C Company at Fort Bragg, North Carolina.

3. The United States Army had a right to the honest services of its supply officers in the receipt, control and distribution of United States military supplies. As an employee,

defendant ST. CLARENCE D. AVERY owed a duty to receive, secure and distribute military supplies, including body armor, to soldiers in C Company. In violation of that duty, Avery took United States military issue OTVs and SAPIs, offered them for sale to the public, and kept the proceeds for his own personal benefit.

4. From in or about December 2003, to in or about January 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

ST. CLARENCE D. AVERY

devised and intended to devise a scheme: (1) to defraud the United States Army and the citizens of the United States of the intangible right to AVERY's honest services in the receipt, control and distribution of United States military supplies; (2) to defraud the United States Army; and (3) to obtain money and property by means of false and fraudulent pretenses, representations and promises.

Avery's Sales of Body Armor

5. As unit supply specialist, defendant ST. CLARENCE D. AVERY was responsible for, among other things, preparing and maintaining supply records, receiving inventory, and securing and distributing military supplies for C Company. The military supplies for which Avery was responsible included body armor such as OTVs and SAPIs.

6. Defendant ST. CLARENCE D. AVERY used his position as unit supply specialist for C Company to take body armor, including OTVs and SAPIs, from the United States Army. The body armor was intended to be issued to soldiers who were being deployed to serve during a time of war in Afghanistan and Iraq. Instead, defendant AVERY sold that body armor to individuals by means of false representations, and keep the proceeds for his own personal

benefit.

7. The OTVs offered for sale by defendant ST. CLARENCE D. AVERY were manufactured by Point Blank Body Armor, Inc., in Fort Lauderdale, Florida, pursuant to a contract awarded by the Defense Logistics Agency, a procuring division of the Department of Defense. The OTVs were lightweight body armor designed to provide protection against assault rifle ammunition, and could be legally possessed and used only by the United States military. They were not permitted to be sold to the public as surplus equipment.

8. The SAPIs offered for sale by defendant ST. CLARENCE D. AVERY were manufactured pursuant to a contract awarded by the Defense Logistics Agency. The SAPIs were lightweight body armor designed to be used with the OTVs to provide greater protection against assault rifle ammunition, and could be legally possessed and used only by the United States military. They were not permitted to be sold to the public as surplus equipment.

9. The internet auction site eBay is a venue where buyers and sellers set up accounts to engage in online sales transactions. A seller must be legally able to sell the items he lists for sale on eBay.

10. Defendant ST. CLARENCE D. AVERY used eBay and electronic mail to sell the stolen military body armor to the public.

11. Defendant ST. CLARENCE D. AVERY often identified his location to eBay bidders as Philadelphia, United States. In fact, Avery resided in Fort Bragg, North Carolina.

12. After completion of a sale, defendant AVERY shipped and caused to be shipped from Fayetteville, North Carolina, to buyers in several states, the stolen OTVs and

SAPIs, often using a return address in Philadelphia, Pennsylvania.

13. On or about December 9, 2003, defendant ST. CLARENCE D. AVERY, offered for sale on eBay a size large Point Blank Interceptor OTV which was purchased by a buyer known to the grand jury as M.S. The purchase price following the completed auction was \$501.51, plus shipping. On or about December 15, 2003, defendant ST. CLARENCE D. AVERY caused the OTV to be shipped from North Carolina to an address in the state of Connecticut.

14. On or about December 15, 2003, defendant ST. CLARENCE D. AVERY sent an electronic mail message to the buyer known to the grand jury as M.S. Defendant AVERY offered one pair of SAPI plates for sale, which were purchased by M.S. for \$475, plus shipping. On or about December 18, 2003, defendant ST. CLARENCE D. AVERY caused one pair of SAPI plates to be shipped from North Carolina to an address in the state of Connecticut.

15. On or about December 17, 2003, defendant ST. CLARENCE D. AVERY offered for sale on eBay a size large Point Blank Interceptor OTV which was purchased by a buyer known to the grand jury as S.C. The purchase price following the completed auction was \$375, plus shipping. Defendant ST. CLARENCE D. AVERY caused the OTV to be shipped from North Carolina to an address in the state of Massachusetts.

16. On or about December 30, 2003, defendant ST. CLARENCE D. AVERY offered for sale an XL sized Point Blank Interceptor OTV which was purchased by a buyer known to the grand jury as B.H. for \$425. Defendant ST. CLARENCE D. AVERY caused the OTV to be shipped from North Carolina to an address in the state of Iowa.

17. On or about December 29, 2003, defendant ST. CLARENCE D. AVERY

offered for sale on eBay an XL sized Point Blank Interceptor OTV which was purchased by a buyer known to the grand jury as T.F. The purchase price following the completed auction was \$455, plus shipping. On or about January 6, 2004, defendant ST. CLARENCE D. AVERY caused the OTV to be shipped from North Carolina to an address in Springfield, Pennsylvania, in the Eastern District of Pennsylvania.

18. On or about January 6, 2004, defendant ST. CLARENCE D. AVERY offered for sale on eBay a size large Point Blank Interceptor OTV which was purchased by a buyer known to the grand jury as C.W. The purchase price following the completed auction was \$420, plus shipping. Defendant ST. CLARENCE D. AVERY caused the OTV to be shipped from North Carolina to an address in the state of Massachusetts.

19. At no time did defendant ST. CLARENCE D. AVERY tell his buyers that the OTVs and SAPIs were munitions list military property.

20. Defendant ST. CLARENCE D. AVERY obtained approximately \$2,782 from buyers of body armor and used the money for his own personal benefit.

21. Through the sales of the stolen body armor between December 2003 and January 2004, defendant ST. CLARENCE D. AVERY caused a loss of approximately \$3,300 to the United States Army.

22. On or about January 6, 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

ST. CLARENCE D. AVERY,

having devised the scheme to defraud, as described in paragraph 4, for the purpose of executing the scheme and attempting to do so, knowingly caused to be delivered by United Parcel Service, a commercial interstate carrier, according to directions thereon, a size extra large Point Blank Interceptor OTV, to a civilian buyer in Springfield, Pennsylvania.

In violation of Title 18, United States Code, Sections 1341 and 1346.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. The allegations of paragraphs 1 through 3 and 5 through 21 of Count One of this indictment are incorporated here.

2. On or about January 6, 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

ST. CLARENCE D. AVERY

knowingly sold without authority a thing of value of an agency and department of the United States, which had been made under contract awarded by the Defense Logistics Agency, specifically, one extra large sized Point Blank Interceptor OTV.

In violation of Title 18, United States Code, Section 641.

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Count One of this indictment,
defendant **ST. CLARENCE D. AVERY:**

Committed an offense in which the loss to the government exceeded \$2,000, as
described in U.S.S.G. § 2C1.7(b)(1)(A)(i) (November 1, 2003 Guidelines Manual).

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
UNITED STATES ATTORNEY